

Minutes of the January 25, 2013 Regular Council Meeting

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Serio, Bunting, Langan, Weistling, Tingle, Carmean and Smallwood

Absent: None

President's Report

- Mayor Serio noted with sadness the passing of Harry Haon, former Council Member and member of the Environmental Committee. Contributions in his memory can be made to the Inland Bays Foundation (www.inlandbaysfoundation.org).
- Mayor Serio advised that the Bethany Beach Volunteer Fire Company will purchase another ambulance within the coming year and that the two portable devices that are used at times of heart problems have already been used to save lives.
- The Budget Committee completed a six-month review and Council will attend the next SCAT (Sussex County Association of Towns) meeting.

Charter & Ordinance

Council Member Weistling acknowledges the passing of Harry Haon and praised his commitment to the town.

- **Proposed First Reading Chapter 160 (Zoning) Residential Zone – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed First Reading (copy attached to these minutes)
Second – Council Member Langan

DISCUSSION

Council Member Weistling thanked Building Official Pat Schuchman for her assistance in compiling the information presented. He advised that this change is primarily to definitions. There is a correction to allow a 6' fence in pool areas and increases the minimum valuation of buildings in this zone from \$15,000 to \$50,000. Mayor Serio asked if this ordinance includes fences around spas; Council Member Weistling advised that it does not.

VOTE: All in favor (7-0)

- **Proposed First Reading Chapter 160 (Zoning) Commercial Zone – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed First Reading (copy attached to these minutes)
Second – Council Member Langan

DISCUSSION

Council Member Weistling advised that this change will replace 160-5 in its entirety with a new 160-5. Among the highlights is the elimination of specific allowable businesses and replaces that with categories that are appropriate to use. A similar change was made regarding parking. All sections will be renumbered. There is a new section "Commercial Zone – Mixed Use" to address businesses and apartments in a commercial zone. This adds the ability to have an apartment in a commercial building based on the number of lots the building covers.

VOTE: All in favor (7-0)

A Public Hearing will be held on Friday, February 22, 2013 at 3:00 PM on both of the above proposed changes.

- **Proposed Second Reading Chapter 52 (Beaches) Beach Concessions – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed Second Reading (copy attached to these minutes)

Second – Council Member Tingle

DISCUSSION

Council Member Weistling advised that the purpose of this ordinance is to set up a basic ordinance for beach concessions in case Council decides to proceed with them. This is a basic ordinance and specifics will be included in the bid documents and contract. Council Member Smallwood noted that food/beverage service is included in the ordinance. Council Member Tingle advised that food/beverage concessions will be allowed only if Council decides that it is desirable.

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VOTE: All in favor (7-0) Smallwood – yes; Carmean – yes; Bunting – yes; Serio – yes; Weistling – yes; Tingle – yes; Langan - yes

- **Proposed Second Reading Chapter 61 (Building and Utility Construction) Propane Tanks – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed Second Reading (copy attached to these minutes)

Second – Council Member Langan

DISCUSSION

Council Member Weistling advised that this ordinance requires inserting subparagraph D to §61-18 and the renumbering of the following subparagraphs. This change came as a result of Superstorm Sandy. The purpose of this ordinance is to prevent damage from floating or overturned tanks that might be dislodged during storms and to eliminate the possibility of fires damage by requiring property owners to anchor the tanks. A discussion of elevated vs. buried tanks followed. The property owner is responsible for anchoring the tank in accordance with the propane tank provider's requirements.

VOTE: All in favor (7-0) Smallwood – yes; Carmean – yes; Bunting – yes; Serio – yes; Weistling – yes; Tingle – yes; Langan - yes

- **Proposed Second Reading Chapter 116 (Peace and Good Order) – Smoking – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed Second Reading (copy attached to these minutes)

Second – Council Member Langan

DISCUSSION

Council Member Weistling advised that this smoking ban is simple and brief. This ordinance came from a recommendation made by the Environmental Committee and is modeled after those used by Bethany Beach and Rehoboth Beach.

VOTE: All in favor (7-0) Smallwood – yes; Carmean – yes; Bunting – yes; Serio – yes; Weistling – yes; Tingle – yes; Langan - yes

Mr. Weistling advised that the Charter and Ordinance Committee is divided on the possibility of increasing the maximum height limit allowed. The consensus is to wait until the new FEMA Flood Plain Elevation documents are presented before taking any action.

Topics for Discussion and Possible Action

a. Application for Hazard Mitigation Grant Program (HMGP) – Building Official Schuchman

Mrs. Schuchman advised that she and Mike Powell, State Flood Plain Coordinator, toured the bayside area after Superstorm Sandy. Many properties had water in the crawl space and several experienced first floor flooding. At least six properties may be eligible for assistance under this program. The town is required to make application on behalf of the property owner and she is seeking Council approval to do so.

Motion to authorize the Building Official to apply for the HMGP on behalf of affected property owners – Council Member Bunting

Second – Council Member Carmean

DISCUSSION

Mrs. Schuchman explained that this is the same program that was used approximately 12 years ago to raise 12 properties above the flood plain elevation. The current properties that might be affected may or may not be eligible and there may or may not be funding available. However, it is the town's responsibility to make the application on their behalf.

Vote: All in favor (7-0)

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b. Beach Concessions – Town Manager Burke

Mr. Burke asked Council's approval for several items relating to beach concessions:

- What is a "season" – Motion to make the "season" from Memorial Day Saturday through the second Sunday in September – Council Member Carmean
Second – Council Member Langan
Vote: All in favor (7-0)
- Size and location of storage boxes – As per Mr. Burke's recommendation, Council agreed that he should seek to have the vendor place the storage boxes on the beach and that they should be similar to those used in other towns. They will be placed on both the town beach and on the state beach to the state line (DNREC approved).
- What products should be included in the bid – Motion to limit the contract to beach equipment only for 2013 – Council Member Carmean
Second – Council Member Smallwood
DISCUSSION – Council Member Langan thought that it might be advisable to allow for the sale of bottled water. The area covers Fenwick Island Beach and the state beach to the state line. Council Member Weistling thought that the sale of hot dogs and sodas would not hurt local restaurants.
Vote: All in favor (7-0)
- Opportunity to offer a contract extension – Council deferred to Mr. Burke on whether to offer an extension depending on the vendor's performance and with Council's approval.
- Should the vendor be allowed to use an ATV or other vehicle to transport its product(s) - Motion to allow no more than 8 storage boxes on the beach and to disallow the use of ATVs and/or other vehicles – Council Member Tingle
Second – Council Member Langan
DISCUSSION – Mr. Burke advised that if ATV/other vehicle is not allowed then the boxes would be placed every three streets but that the use of ATV/other vehicle might cut back on the number of boxes needed to store equipment. Council Member Weistling expressed his desire to see fewer storage boxes.
Vote: All in favor (6-1-0) – Council Member Weistling voted No.

c. Lifeguard Sponsorship Program – Town Manager Burke

Mr. Burke asked for Council's approval to move forward with a Lifeguard Sponsorship Program which will increase advertising opportunities for local businesses and an increase in revenue for the town.

Motion to proceed with the Lifeguard Sponsorship program as outlined by Mr. Burke – Council Member Bunting

Second – Council Member Carmean

DISCUSSION – Mr. Burke has proposed the sale of advertising, specifically the sale of signs to be placed on the lifeguard stands. Signs will be 14x20 and 14x40 and fit on the sides and back of a lifeguard stand. They will be of PVC (cost \$60 and \$115 respectively to the town) and screw onto the chair. This will involve 11 stands – four on the state beach and seven on the town beach. Signs will be offered on a first come, first served basis and advertisers will be able to pick the street location they prefer. Signs may be held over for a second season at which time current advertisers will have the right of first refusal. At this time, the design of the signs has not been set but will probably be a white background and provide for the business name, logo, web site, etc. Mr. Burke will canvas the business community and the Chamber of Commerce and offer them a letter explaining the program.

Vote: All in favor (7-0)

Motion to charge a fee of \$800 for the large sign and \$500 for the small sign to be placed on the lifeguard stands and to offer them on March 1 on a first come, first served basis – Council Member Carmean

Second – Council Member Smallwood

DISCUSSION – A brief discussion of placement of the signs was followed by a discussion of opportunities to renew next year. Council Member Smallwood suggested that the offer to renew would be extended October 1 after the Council and Town Manager have had the opportunity to review the program at the end of the season in September.

Vote: All in favor (7-0)

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d. FY2013 Capital Budget (Amendment)

Council Member Bunting advised that the Budget Committee met to conduct a 6-month review of the budget. As a result of damages from Superstorm Sandy, the town will need to replace stone on the streets at a cost of between \$8,000 and \$10,000. The committee recommends budgeting \$15,000 for an ATV for the Beach Patrol. The previous figure underestimated the cost by \$4,000.

Motion to amend the budget to add these two items – Council Member Bunting

Second – Council Member Langan

DISCUSSION – The cost of replacing the stone was overestimated and is now estimated to be between \$8,000 and \$10,000. Town Manager Burke is seeking \$6,000 to replace interior doors at town hall. The original motion was amended.

Amended Motion to amend and increase the FY2013 Capital Budget by \$20,000 in order to allow \$6,000 for doors, \$10,000 for stone and an increase of \$4,000 for the ATV – Council Member Bunting

Second – Council Member Langan

Vote: All in favor (7-0)

Approval of Minutes:

Motion to Approve the Minutes of December 14, 2012 Meeting - Council Member Carmean

Second - Council Member Weistling

DISCUSSION – None

Vote: 7-0 Minutes Approved

Treasurer's Report:

Council Member Bunting presented his report.

Motion to accept the Treasurer's Report – Council Member Tingle

Second – Council Member Smallwood

DISCUSSION – Council Member Bunting stated that the operating budget is not an issue. He will research what is happening with the Realty Transfer Fund and will look to place those funds in excess of \$250,000 in a savings account.

Vote: All in favor to accept the Treasurer's report (7-0)

Town Manager Report:

Town Manager Burke reported that:

- The Cannon Street Park *ad hoc* Committee will meet on February 7, 2013. DNREC has granted the town a permit to construct the kayak launch.
- DelDOT will allow the town to put a sidewalk in front of town hall from Cannon Street to Bayard Street.
- As a result of the DelDOT curb program, ADA ramps will be at all intersections. West Maryland Avenue intersection will be reconfigured.
- The FY13 Street Paving Project has been completed approximately \$9,000 under budget.
- The town hall interior renovation will be complete when the new doors are installed.
- The town has received a \$9,828 grant from the American Lung Association to assist in carrying out the no smoking program passed by Town Ordinance.
- The town expects to receive \$10,000 from FEMA to reimburse some of the expenses incurred during Superstorm Sandy.

DISCUSSION – Council Member Carmean questioned the data on the Solar Panel Report. Town Clerk DiPietrantonio explained that the report shows electric consumption for three buildings as well as solar panel output.

Department Reports:

- Building Official – Pat Schuchman's report is included in the meeting packet. In addition to those items in the published report, Mrs. Schuchman advised that there 164 Outside Contractors licenses issued, 86 Rental licenses and 31 Resident Merchant licenses in the past month. She continues to issue storm damage repair permits. Six new houses are under construction. She has made a copy of DNREC's newsletter, Coastal Construction, and the Homeowners Handbook available.

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- Public Works – Bryan Reed advised that his report is included in meeting packet. His department has implemented a checklist procedure in order track their workflow. Mr. Reed continues to work with Mr. Burke on a program to supply the town with fuel during emergencies. The department is ready for snow removal.
- Fenwick Island Beach Patrol – no report
- Police Department – Chief Boyden reported that in addition to his report (included in Council booklet) his officers are doing property checks for the winter. Chief Boyden acknowledged the passing of Harry Haon. Mr. Haon was instrumental in the Chief's hiring ten years ago. Council Member Weistling advised that the town can expect many broken water pipes since the weather has been so cold.

Committee Reports:

- Beach Committee – Mayor Serio added that the proceeds from the Fenwick Freeze were \$3,280.
- Environmental Committee – Chair Mary Ellen Langan thanked the Council for implementing a smoking ban.

Planning Commission: No report

Old Business

None

New Business – No Action to be Taken

None

Public Participation:

- Mike Quinn (5 W Houston St) – thanked the Public Works Department for picking up the recycling that the contractor missed on his street. Town Manager Burke advised that the contractor has been notified. Mr. Quinn asked the manner in which property owners will be notified regarding the requirement to secure propane tanks. Building Official Schuchman advised that a notice will be on the town website and Council Member Tingle added that it will be in the Spring Newsletter and that they have one year to comply. Mr. Quinn asked how the smoking ban will be enforced. Chief Boyden advised that the first year will be spent in education. Officers will hand out flyers etc.
- John Belian (1 W Houston St) – thanked the Public Works Department for picking up the recycling.
- Lynn Andrews (1205 Schulz Rd) – regarding the signs on the lifeguard stands, Mrs. Andrews expressed her concern that there will be too many signs on the beach. Council Member Carmean noted that she has a concern regarding too many signs but that part of the issue of the lifeguard stands is that the town needs to increase revenue without taxing the residents to offset the cost of lifeguards. Mrs. Andrews added that she is concerned about trash on the beach from the sale of food. Mayor Serio advised that the Council voted not to allow the sale of food.

Upcoming Events and Meetings:

Mayor Serio announced all upcoming meetings and events. Council Member Weistling advised that there is a C&O meeting on 2/5 at 9:30 and Town Manager Burke advised that Town Hall will be closed on 2/18 for Presidents Day. Mayor Serio noted that the March Council meeting has been rescheduled to Thursday, 3/28 at 3:30 PM.

Motion to adjourn – Council Member Weistling

Second – Council Member Bunting

Meeting adjourned at 4:55` PM.

Agnes DiPietrantonio, Town Clerk
for Diane Tingle, Secretary

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AMENDMENT TO CHAPTER 160 – RESIDENTIAL ZONE

PROPOSED FIRST READING: JANUARY 25, 2013

EXISTING:

§ 160-1. Purpose; authority.

For the purpose of promoting health, safety, morals or the general welfare of the inhabitants of the Town of Fenwick Island, Delaware, and pursuant to the provisions of the Charter of the said Town and the provisions of Title 22, Delaware Code of 1953, Chapter 3, entitled "Municipal Zoning Regulations," the Town Council of the Town of Fenwick Island, Delaware enacts the Zoning Ordinance of the Town of Fenwick Island, Delaware as follows.

PROPOSED:

§ 160-1. Purpose; authority.

For the purpose of promoting health, safety, morals and the general welfare of the inhabitants of the Town of Fenwick Island, Delaware, and pursuant to the provisions of the Charter of the said Town and the provisions of Title 22, Delaware Code of 1953, Chapter 3, entitled "Municipal Zoning Regulations," the Town Council of the Town of Fenwick Island, Delaware enacts the Zoning Ordinance of the Town of Fenwick Island, Delaware as follows.

(AMENDMENTS TO DEFINITIONS AS LISTED HERETO)

§ 160-2. Definitions and word use.

- A. For the purpose of this chapter, certain terms and words are defined as follows:

EXISTING:

APARTMENT - A set of rooms with housekeeping facilities and used as a dwelling for a single family; an apartment shall be part of a building used for commercial purposes on the basis of one apartment for each commercial building.

PROPOSED:

APARTMENT - A set of rooms with housekeeping facilities and used as a dwelling for a single family.

EXISTING:

APARTMENT BUILDING - Any structure or group of structures containing two or more apartments.

PROPOSED:

APARTMENT BUILDING - Any structure containing two or more apartments. Not applicable to mixed use in a building designed specifically for residential use.

EXISTING:

FAMILY - A single person occupying a dwelling unit and maintaining a household; or two or more persons related by blood or marriage or adoption occupying a dwelling unit, living together and maintaining a common household; or not more than three unrelated persons occupying a dwelling unit and maintaining a common household.

PROPOSED:

FAMILY - An individual or two (2) or more persons who are related by blood or marriage living together and occupying a single housekeeping unit with single culinary facilities or a group of not more than five (5) persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost-sharing basis.

EXISTING:

GARAGE, PRIVATE - A garage for storage only with capacity for not more than three steam- or motor-driven vehicles, only one of which may be a commercial vehicle.

GARAGE, PUBLIC - Any building on premises used for housing or care of more than three steam- or motor-driven vehicles, or more than one commercial vehicle, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

PROPOSED:

GARAGE, PRIVATE - A garage for storage only with capacity for not more than three motor-driven vehicles, only one of which may be a commercial vehicle.

GARAGE, PUBLIC - Any building on premises used for housing or care of more than three motor-driven vehicles, or more than one commercial vehicle, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

EXISTING:

LOT, CORNER - A lot fronting on two or more streets intersecting at an angle of not more than 135°.

PROPOSED:

LOT, CORNER - A lot fronting on two or more streets intersecting at an angle.

EXISTING:

PROFESSIONAL PERSON - Those individuals who are duly licensed by the State of Delaware to practice their occupations, and includes physicians, optometrists, dentists, attorneys, architects, surveyors, engineers, insurance agents, accountants, stock brokers, commodity brokers and real estate brokers.

PROPOSED:

PROFESSIONAL PERSON - Those individuals who are duly licensed by the State of Delaware to practice their occupations, and including but limited to physicians, optometrists, dentists, attorneys, architects, surveyors, engineers, insurance agents, accountants, stock brokers, commodity brokers and real estate brokers.

EXISTING:

STREET - A public thoroughfare 40 feet or more in width.

PROPOSED:

STREET - A paved thoroughfare for public access.

EXISTING:

STRUCTURAL ALTERATIONS - Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, excepting such alterations as may be required for the safety of the building.

PROPOSED:

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STRUCTURAL ALTERATIONS - Any change in the supporting members of a building, such as **but not limited to** bearing walls, columns, beams or girders, excepting such alterations as may be required for the safety of the building.

EXISTING:

UNINHABITABLE ATTIC - The area between roof framing and the ceiling of the rooms below that is not habitable but may be reached by ladder or pull-down stairs/ladder only and used for storage **of** mechanical equipment.

PROPOSED:

UNINHABITABLE ATTIC - The area between roof framing and the ceiling of the rooms below that is not habitable but may be reached by ladder or pull-down stairs/ladder only and used for storage **and** mechanical equipment.

EXISTING:

YARD, REAR - The area between the rear line of a building, **other than of a building for accessory use**, and the rear lot line.

PROPOSED:

YARD, REAR - The area between the rear line of a building and the rear lot line.

EXISTING:

§ 160—4A(2)(e)[2]

[2] Every unenclosed portion of a residential pool shall be protected by a continuous safety barrier consisting of county-approved fencing or its equivalent. Fencing which is part of such a required pool safety barrier may be up to six feet **in height as long as the fencing does not encroach into any required pool setback area**. Barriers are not required for hot tubs or spas when a cover is provided.

PROPOSED:

[2] Every unenclosed portion of a residential pool shall be protected by a continuous safety barrier consisting of county-approved fencing or its equivalent. Fencing which is part of such a required pool safety barrier may be up to six feet. Barriers are not required for hot tubs or spas when a cover is provided.

EXISTING:

§ 160—4C. Area regulations. The minimum dimensions of yards and the minimum lot area **per family**, except as provided in § 160-6, shall be as follows:

PROPOSED:

§ 160—4C. Area regulations. The minimum dimensions of yards and the minimum lot area, except as provided in **§ 160-8**, shall be as follows:

EXISTING:

§ 160—4C(1)

(1) Lot area **per family**. Each dwelling erected after July 11, 1956, in this zone shall occupy a lot with a minimum area of 5,000 square feet and a minimum width of 50 feet at the front building line, except as provided in § 160-6A(3). No lot area shall be so reduced or diminished by this chapter.

PROPOSED:

(1) Lot area. Each dwelling erected after July 11, 1956, in this zone shall occupy a lot with a minimum area of 5,000 square feet and a minimum width of 50 feet at the front building line, except as provided in **§ 160-8A(3)**. No lot area shall be so reduced or diminished by this chapter.

EXISTING:

§ 160—4D.

Minimum size of dwelling erected on a lot; valuation thereof. No building erected, maintained or occupied in this zone exclusive of accessory buildings shall occupy less than 750 square feet of a lot nor have a fair valuation of less than **\$15,000**.

PROPOSED:

Minimum size of dwelling erected on a lot; valuation thereof. No building erected, maintained or occupied in this zone exclusive of accessory buildings shall occupy less than 750 square feet of a lot nor have a fair valuation of less than **\$50,000**.

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AMENDMENT TO CHAPTER 160 – COMMERCIAL ZONE

PROPOSED FIRST READING – JANUARY 25, 2013

§ 160-5. Commercial Zone.

EXISTING:

- A. Use regulations. Unless herein provided, no building or premises shall be used or any building or structure be hereafter erected, altered or repaired in the Commercial Zone except for one or more of the following uses:

- (1) Any use permitted in the Residential Zone.
- (2) Apartments. One apartment in a building used for other commercial purposes. Apartment buildings are prohibited.
- (3) Coffee shop having no more than 10 seats serving over the counter nonalcoholic beverages, bagels and/or pastries.
- (4) Antique shop.
- (5) Vehicle filling or service station, subject to the following requirements:
 - (a) When such use abuts the side and/or rear line of a lot in any Residential Zone, a solid wall or substantial, solid fence five feet in height shall be constructed and maintained along said lot line.
 - (b) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street intersection of the front and side street lines of the lot, and such driveways shall not exceed 25 feet in width.
 - (c) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building limit line; and all service, storage or similar activities in connection with such use shall be conducted entirely within the premises.
 - (d) Light vehicle repair work may be done at a vehicle filling station (no body or fender repair permitted).
 - (e) A lot shall not be used for a vehicle filling station if it is within 300 feet of a public or private school, a public park or playground or a hospital.
- (6) Vehicle parts or supply store.
- (7) Bakery.
- (8) Bank or trust company.
- (9) Barbershop.
- (10) Beauty shop.
- (11) Book, newspaper and magazine store, provided that no adult books or pornographic literature or material is offered for sale or viewing.
- (12) Building supply store (retail) and warehouse.
- (13) Business office.
- (14) Church, convent or monastery.
- (15) Confectioner, provided that goods prepared on the premises shall be offered for sale on the premises and at retail.
- (16) Dairy products store.
- (17) Delicatessen.
- (18) Drugstore.
- (19) Eleemosynary and philanthropic institutions.
- (20) Express office.
- (21) Florists.
- (22) Fruit store.
- (23) Funeral parlor or undertaking establishment.
- (24) Furniture store.
- (25) Gift shop.
- (26) Grocery store.
- (27) Hand laundry.
- (28) Hardware store.
- (29) Hospital, nursing and care home, medical and dental clinics.
- (30) Motel/hotel.
- (31) Household appliance store, provided that there shall be no radio phonograph or other speaker located outside of such store or designated or arranged as an attention-calling device to attract passersby.
- (32) Jewelry store.
- (33) Laundromat or launderette.
- (34) Laundry pickup station for work to be done elsewhere.

PROPOSED:

- A. Use regulations. Unless herein provided, no building or premises shall be used or any building or structure be hereafter erected, altered or repaired in the Commercial Zone except for one or more of the following uses:

- 1) Any use permitted in the Residential Zone
- 2) Retail store or personal services shop (not including activities requiring outdoor use of power tools or animal treatment and/or sale).
- 3) Professional offices and banks.
- 4) Motels/hotels.
- 5) Utility buildings.
- 6) Educational, religious and fraternal/service organizations.
- 7) Vehicle filling or service station, subject to the following requirements:
 - (a) When such use abuts the side and/or rear line of a lot in any Residential Zone, a solid wall or substantial, solid fence seven feet in height shall be constructed and maintained along said lot line.
 - (b) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street intersection of the front and side street lines of the lot, and such driveways shall not exceed 25 feet in width.
 - (c) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building limit line; and all service, storage or similar activities in connection with such use shall be conducted entirely within the premises.
 - (d) A lot shall not be used for a vehicle filling station if it is within 300 feet of a public park or playground or a hospital.

EXISTING:

- (35) Farmers' market.

- (a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

FARMERS' MARKET - An open outdoor market setting whereat fresh agricultural items, horticultural items, baked goods, seafood and/or other fresh food items that have been locally grown, produced or processed by vendors who are members of the Fenwick Island Farmers' Market may be sold.

FENWICK ISLAND FARMERS' MARKET - The nonprofit organization consisting of community volunteers and local growers, which has been sanctioned by the Town Council of the Town of Fenwick Island and the Delaware Department of Agriculture.

RULES AND REGULATIONS OF THE FENWICK ISLAND FARMERS' MARKET - The rules and regulations imposed by the Fenwick Island Farmers' Market nonprofit organization.

VENDORS - Persons or entities selling only agricultural, horticultural, baked goods, seafood and/or other fresh food items that they themselves have grown, produced or processed.

- [1] Individual vendors operating outside the established hours of the Fenwick Island Farmers' Market will be permitted to sell local items purchased from members of the Fenwick Island Farmers' Market.

- [2] All vendors must be members of the Fenwick Island Farmers' Market.

- [3] All vendors must also receive a business license from the Town of Fenwick Island to operate individually outside the established hours of the Fenwick Island Farmers' Market.

- [4] Proof of membership in the Fenwick Island Farmers' Market must be submitted at the time of application for a business license.

- (b) Permitted locations. Farmers' markets will be only permitted on vacant, unimproved lots, which shall be at least 100 feet by 100 feet in size (either individually or combined), in the Commercial Zone in Town.

- (c) Regulations.

- [1] If a vendor is not the record owner of the vacant, unimproved lot where the farmers' market will be located, the vendor must submit to the Town Manager at the time of licensing written proof that the record owner consents to the operation of a farmers' market on the vacant, unimproved lot in question. If a vendor is the record owner of the vacant, unimproved lot in question, then proof of ownership must be submitted to the Town Manager at the time of licensing.

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[2] Vendors shall comply with all local, county, state and other health laws, rules or regulations pertaining to their operation.

[3] Vendors must provide for the removal of all waste generated by or in connection with the operation of the farmers' market. Such waste removal shall include, but not be limited to, the removal of all recyclable materials for the designated purpose of recycling.

[4] Farmers' markets shall be operated on a seasonal basis only, from May 1 through October 31 of any calendar year.

[5] All meat, seafood, dairy and baked products sold at a farmers' market must meet the safety and quality control requirements of the rules and regulations of the Fenwick Island Farmers' Market.

[6] No live animals of any kind, except seafood, may be sold, kept or slaughtered at a farmers' market.

PROPOSED:

8) Farmers' market. **NUMBER CHANGE ONLY – NO CHANGE IN CONTENT**

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

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[4] Proof of membership in the Fenwick Island Farmers' Market must be submitted at the time of application for a business license.

[5] No license fee shall be charged for members of the Fenwick Island Farmers' Market.

(b) Permitted locations. Farmers' markets will be only permitted on vacant, unimproved lots, which shall be at least 100 feet by 100 feet in size (either individually or combined), in the Commercial Zone in Town.

(c) Regulations.

[1] If a vendor is not the record owner of the vacant, unimproved lot where the farmers' market will be located, the vendor must submit to the Town Manager at the time of licensing written proof that the record owner consents to the operation of a farmers' market on the vacant, unimproved lot in question. If a vendor is the record owner of the vacant, unimproved lot in question, then proof of ownership must be submitted to the Town Manager at the time of licensing.

[2] Vendors shall comply with all local, county, state and other health laws, rules or regulations pertaining to their operation.

[3] Vendors must provide for the removal of all waste generated by or in connection with the operation of the farmers' market. Such waste removal shall include, but not be limited to, the removal of all recyclable materials for the designated purpose of recycling.

[4] Farmers' markets shall be operated on a seasonal basis only, from May 1 through October 31 of any calendar year.

[5] All meat, seafood, dairy and baked products sold at a farmers' market must meet the safety and quality control requirements of the rules and regulations of the Fenwick Island Farmers' Market.

[6] No live animals of any kind, except seafood, may be sold, kept or slaughtered at a farmers' market.

EXISTING:

(46) Restaurant or eatery as herein defined, subject to the following requirements:

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

BAR - A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises. "Bars" include taverns, taprooms, nightclubs, dance halls, dance clubs, lounges, pubs, cabarets, private clubs, bottle clubs and similar facilities serving alcoholic beverages.

BAR AREA - The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

EATERY - A commercial establishment whose primary activity is carry-out food services. If indoor seating is provided, it shall be limited to a maximum of 35 patrons.

OUTSIDE SERVICE AREA - A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

PATRON AREA - The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and rest rooms.

PERMANENT SEATED DINING AREA - The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.

RESTAURANT - A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers, etc. at anytime in the evening are not considered complete meals.

(b) Requirements.

[1] No bar, as defined, shall be allowed in Fenwick Island.

[2] No bar area, as defined shall be allowed in any outside service area.

[3] Alcoholic beverages may not be served at an eatery.

[4] In-car or drive-through service may not be provided by an eatery.

[5] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.

[6] Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.

[7] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.

[8] Music or entertainment, live or recorded, shall not be allowed in any outside service area.

[9] Neither entertainment, except music, nor dancing may be offered in a restaurant or its bar area, either through advertisement or by providing a temporary or permanent dance floor.

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[10] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.

[11] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.

[12] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m. or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant or eatery that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant or eatery owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.

[13] No restaurant or eatery may operate without a valid certificate of compliance and establishment license as described in Chapter 100, Licensing.

PROPOSED:

9) Restaurant or eatery as herein defined, subject to the following requirements:

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

BAR - A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises.

BAR AREA - The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

EATERY - A commercial establishment where food is prepared and served to the public.

OUTSIDE SERVICE AREA - A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

PATRON AREA - The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and rest rooms.

PERMANENT SEATED DINING AREA - The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.

RESTAURANT - A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers, etc. at anytime in the evening are not considered complete meals.

(b) Requirements.

[1] No bar, as defined, shall be allowed in Fenwick Island.

[2] No bar area, as defined shall be allowed in any outside service area.

[3] In-car or drive-through service may not be provided by a restaurant.

[4] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire

Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.

[6] Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.

[7] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.

[8] Music or entertainment, live or recorded, shall not be allowed in any outside service area except for occasions approved by Town Council.

[10] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.

[11] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.

[12] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m. or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.

b) Certificates of compliance for restaurants or eateries.

1. No establishment license will be issued for a restaurant or eatery as defined in Chapter 160, Zoning, unless it first receives a valid Certificate of Compliance from the Building Official indicating compliance with all applicable Town codes. The procedures related to a Certificate of Compliance will be the same as described for an establishment license in § 100-4 through §100-16 of Chapter 100, Licensing, except for the following:

- a. The words "Building Official" will be substituted for the words "Town Manager."
- b. The words "Certificate of Compliance" will be substituted for the word "license."
- c. In addition to the information required in § 100-4A(1) through (8), the applicant for a Certificate of Compliance will provide the following:
 - i. A floor plan showing the dimensions, square footage and location of the patron area, permanent seated dining area, outside service area and bar area as defined in § 160-5A(8)(b).
 - ii. The number of patrons that can be seated in the permanent seated dining area and the outside service area.
 - iii. The hours in which complete meals will be offered as described in § 160-5A(8)(b)[12].
 - iv. Copies of existing Delaware Alcoholic Beverage Control Commission licenses and applications therefor and Fire Marshal permits.

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2. All existing restaurants and eateries must apply for a certificate of compliance on or before September 1, 1996, or at the time of application for a building permit under Chapter 61, whichever comes sooner. Authorization by the Town Council of the issuance of a Certificate of Compliance to a restaurant conducting business as of June 21, 1996, which does not conform to the requirements of Chapter 160, Zoning, will be based on conditions existing as of June 21, 1996. Such authorization will document the specific type(s) and degree(s) of nonconformance allowed (i.e., grandfathered) to existing and future owners of such restaurants and eateries.
3. Any modifications to the floor plan described in § 160-5A(8)(b) must be submitted to the Building Official prior to implementation to determine whether a new Certificate of Compliance and/or building permit is required.
4. A Certificate of Compliance must be renewed each year and/or whenever there is a change in the ownership of a restaurant or eatery.

EXISTING:

(55) Townhouses:

- (a) The average minimum lot area per dwelling unit shall be 5,000 square feet.
- (b) Lot frontage, measured at the front building limit line, for individual dwelling units of a townhouse may be reduced to not less than 16 feet.
- (c) For the purpose of the side yard regulations, a townhouse building shall be considered as one building on one lot and shall have minimum side yards of seven feet. Any side yard adjacent to the line of a lot in a single-family Residential District shall not be less than 10 feet. Any side yard adjacent to a street shall be not less than 15 feet.
- (d) Depth of front and rear yards of a townhouse must have an aggregate of not less than 40 feet. Front yards shall be not less than 25 feet. Distribution of the required aggregate of the front and rear yards total will be subject to site plan review and approval. Any rear yard adjacent to the line of a lot in a single-family Residential District shall be not less than 10 feet.
- (e) Detached garages or carports shall not be permitted except as shown on the approved site plan, with specific approval given for same in site plan review.
- (f) Unless otherwise restricted by district regulations, not more than four dwelling units shall be included in any one townhouse building, with no overall outside wall dimensions of more than 85 feet.
- (g) Required off-street parking space of two spaces per family dwelling unit shall be provided on the lot of each dwelling unit or within an on-site parking area within the common area with approval subject to site plan review.
- (h) No family unit shall be so designed or constructed that would locate any part of one family unit above another family unit.
- (i) Any issue or item involving townhouses that is not specifically covered by § 160-5 shall be governed by § 160-4C.
- (j) Commercial buildings and townhouses, as defined herein, may be constructed so as to extend over more than one lot area in which event the side yard requirements shall apply only to the perimeter of the building or the nearest building of the cluster to the adjacent side property line.
- (k) A townhouse is defined as a single-family dwelling and may not be used for any other use which is not permitted in the Residential Zone.
- (l) Floor area ratio. For a townhouse building, the maximum floor area ratio shall be 70%.

PROPOSED:

10) Townhouses:

- a) The average minimum lot area per dwelling unit shall be 5,000 square feet.
- b) Lot frontage, measured at the front building limit line, for individual dwelling units of a townhouse may be reduced to not less than 16 feet.
- c) For the purpose of the side yard regulations, a townhouse building shall be considered as one building on one lot and shall have minimum side yards of seven feet. Any side yard adjacent to the line of a lot in a single-family Residential District shall not be less than 10 feet. Any side yard adjacent to a street shall be not less than 15 feet.
- d) There shall be a front setback of not less than 25 feet and a rear setback of not less than 10 feet for all construction including decks and steps. For a townhouse building, the maximum floor area ratio shall be 70%.
- e) Detached garages or carports shall not be permitted.

- f) Unless otherwise restricted by district regulations, not more than four dwelling units shall be included in any one townhouse building, with no overall outside wall dimensions of more than 85 feet.
- g) Required off-street parking space of two spaces per family dwelling unit shall be provided on the lot of each dwelling unit or within an on-site parking area within the common area with approval subject to site plan review.
- h) No family unit shall be so designed or constructed that would locate any part of one family unit above another family unit.
- i) Any issue or item involving townhouses that is not specifically covered by § 160-5 shall be governed by § 160-4C.
- j) Commercial buildings and townhouses, as defined herein, may be constructed so as to extend over more than one lot area in which event the side yard requirements shall apply only to the perimeter of the building or the nearest building of the cluster to the adjacent side property line.
- k) A townhouse is defined as a single-family dwelling and may not be used for any other use which is not permitted in the Residential Zone.

EXISTING:

(61) Auctions

PROPOSED: (renumber section only)

11) Auctions: **(CHANGE ONLY IN NUMBER (10) AND SECTIONS INDICATED IN (d) and (e)**

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

AUCTION HOUSE - Any premises within the Commercial Zone where personal or real property is sold by auction to the highest bidder by a professional auctioneer.

PROFESSIONAL AUCTIONEER - Every person engaged in the business of crying sales of real or personal property on behalf of other persons for profit. A professional auctioneer must be licensed as an auctioneer by the State of Delaware and the Town of Fenwick Island. All professional auctioneers must be insured to the extent required by the State of Delaware and Delaware law.

REAL ESTATE AUCTION - An auction whereat any real property within the Town of Fenwick Island is sold to the highest, qualified bidder. Real estate auctions must be conducted by a professional auctioneer and may be, but are not required to be, held on the real property being sold at auction.

(b) Regulations for auction houses and real estate auctions:

- [1] Auctions must adhere to all federal and state laws and regulations.
- [2] All auctions must be conducted by a professional auctioneer licensed by the State of Delaware and the Town of Fenwick Island.
- [3] Any and all personal property being sold at auction must be stored and displayed inside the auction house. No such personal property may be stored or displayed outside of the auction house.
- [4] No signs or devices which produce noise or sound, or which emit visible smoke, vapor, particles or odor shall be used for advertising purposes or to attract attention.
- [5] A register of all buyers and sellers participating in an auction must be maintained at all times by the professional auctioneer responsible for conducting the auction. As part of said register, the professional auctioneer must also maintain an accurate list of all real and/or personal property bought and sold, together with a description of said real and/or personal property.
- [6] All auctions must be completed by 9:30 p.m.
- [7] No auctions of livestock or domestic, foreign and/or exotic animals are permitted.

(c) A license issued by the Town of Fenwick Island to a professional auctioneer may be suspended and/or revoked for any violation of the regulations for auction houses and real estate auctions set forth above. Such a suspension and/or revocation may also occur for reasons that include, but are not limited to, the following:

- [1] Misleading or untruthful advertising.
- [2] Flagrant misrepresentation of the quality or existence of the personal or real property being sold at auction.
- [3] Knowingly using false bidders.
- [4] Absent a good faith, bona fide dispute, failure to remit payment to the seller of any real or personal property sold at auction and/or failure to transfer any real or personal property sold at auction to the ultimate purchaser thereof.

(d) Inspection of auction houses. Town officials shall have the power to inspect, during reasonable business hours, any auction house for the purpose of determining compliance with this § 160-5A(10) or any other applicable provision of the Town Code, as

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well as to determine compliance with state licensing or other regulatory requirements. During any such inspection, Town officials may secure and confiscate any evidence discovered that may be necessary for prosecution under this chapter. Town officials may, but shall not be obligated to, refer any suspected criminal activity to the proper police authorities.

(e) Violations and penalties. Any person or entity in violation of this § 160-5A(10) shall be obligated to pay a civil fine in the amount of \$500 for the first violation. Subsequent violations shall be punishable by a fine in such amount of \$1,000 per violation. Each day that a violation continues shall be deemed to be a separate and additional violation for purposes of the civil fine imposed hereby. Any appeal of the civil fine imposed shall be lodged with the Fenwick Island Town Council within 10 days of receipt of written notice from the Town that the civil fine has been imposed. In the event of an appeal, the appealing party shall be given an opportunity to be heard and to present his case for rescission or reduction of the civil fine before the Town Council. The decision of the Town Council following any such appeal shall be final. Any and all civil fines imposed hereby shall be collectible in the same manner as delinquent taxes, and the Town shall be entitled to recover all costs and reasonable attorneys' fees incurred in connection with any such collection effort.

EXISTING:

B. Height regulations. No building shall exceed a height of 30 feet, except as provided in § 160-6A(2)

PROPOSED:

B. Height regulations. No building shall exceed a height of 30 feet, except as provided in § 160-8A(2).

EXISTING:

C. Area regulations. Same as § 160-4C as to use for single-family dwellings. For uses other than residential, the front building limit line setback, side yard and rear yard requirements shall be as follows:

- (1) Front building limit line. The building limit line shall set back from the front lot line not less than 25 feet.
- (2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in § 160-6A(3) and (8), and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet.
- (3) Rear yard. There shall be a rear yard having a minimum depth of 10 feet.
- (4) The area between the front lot line and the front building limit line may be used for driveways only. The side yard and rear yard areas may be used for driveways and parking areas, provided, further, that only limited-access entrances and exits to such driveways and parking areas are permitted from the bordering streets. The limited-access entrances and exits shall be controlled by drop curbs or, where no curbs exist, by a fence, wall or other such structure or planting between such entrances and exits, and the parking areas shall comply with the parking regulations of this chapter. No part of any required building setback area in the front, rear, or side of any lot in the Commercial Zone may be covered or paved with impervious or semi-impervious materials such as concrete, asphalt, brick, flagstone, etc. Such coverings or paving existing at the time of enactment of this subsection may continue to be used and repaired as a nonconforming use, but may not be expanded in any horizontal dimension nor rebuilt or replaced with such materials.
- (5) Each motel/hotel permitted to be erected or altered hereafter shall occupy a lot(s) providing a minimum of 1,000 square feet of land area for each sleeping room therein, including sleeping rooms in any apartment included in the motel/hotel building.

PROPOSED:

(2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in § 160-8A(3) and (8), and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet.

EXISTING: (will remain the same – no change)

D. Fire regulations. All construction in the Commercial Zone must be approved by the State Fire Marshal, except individual single-family dwellings.

EXISTING: (will remain the same – no change)

E. Lighting. Lighting (inside and/or outside) on commercial properties must be arranged so as not to reflect or cause glare into any residential property where the intensity of light is strong enough to seriously disturb a person of normal sensibilities. This includes the lighting of permitted illuminated signs.

EXISTING: (will remain the same – no change)

§ 160-6. Parks Zone.

A. Use regulations. Unless herein provided, no building or premises or site shall be used or any building or structure be hereafter erected, altered or repaired in the Parks Zone except for one or more of the following principal permitted uses:

1. Public athletics facilities.
2. Playgrounds.
3. Outdoor educational facilities.
4. Public outdoor meetings.
5. Public recreation.
6. Public piers and docks.

B. Accessory uses and accessory structures permitted:

1. Off-street parking and loading facilities.
2. Other accessory uses which are incidental to recreational uses.
3. Small utility buildings or other small storage structures used for storage of equipment and supplies used in connection with park related activities.
4. The height of an accessory structure shall not exceed 15 feet above existing ground contour level at the accessory structure site location.

C. Area and yard requirements:

1. Building structures, such as but not limited to, utility buildings, playground equipment, picnic tables, and gazebos shall meet the following minimum setbacks requirements:
 - a) Front yard setback – 20 feet from the front lot line.
 - b) Rear yard setback – 10 feet from the rear lot line.
 - c) Side yard setback - 5 feet from each side lot line.
2. A fence not to exceed six feet in height shall be permitted to screen the park from adjacent residential properties. Such a fence shall not be completely solid, but shall have openings comprising approximately 20% to 30% of the total surface area of the fence in order to provide for the flow-through of air.

D. Town Council may adopt by Resolution additional rules and regulations applicable to any park owned and/or operated by the Town. Additional rules and regulations applicable to any park that is privately owned may be imposed by the Town Council from time to time, but shall require an amendment to the zoning ordinances of the Town.

PROPOSED: (ADD NEW SECTION 160-7 AND RE-NUMBER FOLLOWING SECTIONS)

§ 160—7. Commercial Zone/Mixed Use.

A. Apartment Regulations/Mixed Use:

1. One apartment per 6,500 square foot lot.
2. For building utilizing multiple lots, apartment shall be allowed as one apartment per 6,500 lot.
3. The number of apartments located within a mixed use building is restricted by the number of lots on which the building is constructed.
4. Two designated parking spaces per apartment.
5. Landlord shall supply a recycle bin and trash receptacle. No cans, bins or trash bags are allowed on any exterior area of the building.
6. All recycle bins and trash receptacles shall be screened from view of all public streets and residential areas with a type of screening such as fencing or landscaping.
7. Each apartment must be registered in the Town and the owner shall keep all information related to the unit current or risk revocation of permit.
8. Each apartment must be occupied by non-transient person(s) as tenant(s) on a long-term basis of not less than three months.
9. Each apartment shall contain a full kitchen, a bathroom plus a washer and dryer.
10. An apartment must be in compliance with Chapter 160-2B (Definitions and word use), definition of "Single-Family Dwelling", items (1) (a), (b) and (c).

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EXISTING:

§ 160—6. General regulations; exceptions.

PROPOSED:

§ 160—8. General regulations; exceptions.

§ 160-8A(1) through § 160-8A(9) will be renumbered only

EXISTING:

§ 160-8. Off-street parking regulations.

A. Except as otherwise provided in this chapter, when any building or structure is hereafter erected or there is an addition to any building or structure which increases the square foot area of the building or structure or any building or structure or portion thereof is converted for the uses listed in Column 1 of the chart below, accessory off-street parking spaces shall be provided as required in Column 2 or Column 3 of the chart below or as required in subsequent sections of this chapter.

Off-Street Parking Requirements			
Use or Use Category	Spaces Required Per Basic Measuring Unit	Additional Requirements	
Single-family dwelling or townhouse	2 per dwelling		
Church or temple, auditorium or place of assembly	1 per 5 seats or bench seating spaces	(Seats in main auditorium only)	
Public buildings such as public library, museum, art gallery or community center	10 per use	Plus 1 additional space for each 300 square feet of floor area	
Sanitarium, convalescent home, home for the aged or similar institution	1 per 5 patient beds		
Motel/hotel [Amended 9-23-2005]	1 per sleeping room	Plus 1 for each 10 rooms or portion thereof	
Hospital	1 per 2 patient beds		
Office or office building, post office, studio or clinic	1 per 200 square feet of floor area	6 spaces minimum, 10 spaces minimum for a clinic	
Funeral home	1 per 50 square feet of floor area excluding storage and work area	30 spaces minimum	
Restaurant or eatery [Amended 7-26-1996]	1 per 75 square feet of total patron area or 1 per 3 seats for patrons, whichever is greater	1 for every 2 employees on shift with most employees	
Retail store or personal service	1 per 200 square feet of total	Retail food stores over 4,000	

establishment and banks	floor area	square feet: 1 per 100 square feet of floor area
Furniture or appliance store	1 per 300 square feet of floor area	6 spaces minimum
Tennis courts	4 for 1 court and 2 for each additional court	
Swimming pool in connection with and on the same site as a motel or hotel	for other than	20 spaces minimum if used motel or hotel residents
General service or repair establishment, printing, publishing, plumbing, heating, broadcasting station, similar establishment	1 per 2 employees on premises	Plus space for storage of trucks or other vehicles used in connection or with the business

PROPOSED:

§ 160-10. Off-street parking regulations.

A. Except as otherwise provided in this chapter, when any building or structure is hereafter erected or there is an addition to any building or structure which increases the square foot area of the building or structure or any building or structure or portion thereof is converted for the uses listed in Column 1 of the chart below, accessory off-street parking spaces shall be provided as required in Column 2 or Column 3 of the chart below or as required in subsequent sections of this chapter.

Off-Street Parking Requirements			
Use or Use Category	Spaces Required Per Basic Measuring Unit	Additional Requirements	
Single-family dwelling or townhouse	2 per dwelling		
Church or temple, auditorium or place of assembly	1 per 5 seats or bench seating spaces	(Seats in main auditorium only)	
Public buildings such as public library, museum, art gallery or community center	10 per use	Plus 1 additional space for each 300 square feet of floor area	
Motel/hotel	1 per sleeping <i>unit</i>	Plus 1 for each 10 rooms or portion thereof	
Professional Services Building	1 per 200 square feet of floor area	6 spaces minimum, 10 spaces minimum for a clinic	
Restaurant or eatery	1 per 100 square feet of total patron area		
Retail store	1 per 300 square feet of floor area		

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EXISTING:

C. Location of parking spaces.

(1) Residential. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.
- (b) On an open area of the lot.

(2) Commercial. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.
- (b) On an open area of the lot, provided that the parking area(s) required for any building or structure hereafter erected shall be setback a distance of not less than three feet from any lot lines and shall be set back a distance of not less than three feet from the structure.
- (c) If approved by the Town Council, open parking spaces required for a structure may be located on a lot(s) other than those intended to be served, provided that:

[1] It is not practicable to locate such spaces in accordance with Subsection C(2) because of:

- [a] Unusual shape, size or dimensions of the lot;
- [b] The lack of an alley or the lack of appropriate ingress or egress facilities through existing or proposed alleys or streets; or
- [c] Traffic hazards.

[2] When the accessory parking spaces are to be located elsewhere than on the lot upon which the structure they are intended to serve is located, such parking on adjacent lot or lots separated only by an alley from the lot upon which the structure is located shall be preferred.

[3] Such spaces are so located as to furnish reasonable and convenient parking facilities for the occupants or guests of the structure for which they are designed to serve, but in no case shall they be farther than 200 feet from the closest lot line of the lot upon which the structure is located.

[4] The Council may impose conditions as to screening, coping, setbacks, fences, the location of entrances and exits or any other requirement it shall deem necessary to assure the continued provision and maintenance of such spaces.

PROPOSED:

C. Location of parking spaces.

(1) Residential. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.
- (b) On an open area of the lot.

(2) Commercial. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.
- (b) On an open area of the lot, provided that the parking area(s) required for any building or structure hereafter erected shall be setback a distance of not less than three feet from any lot lines and shall be set back a distance of not less than three feet from the structure.
- (c) If approved by the Town Council, open parking spaces required for a structure may be located on a lot(s) other than those intended to be served, provided that:

[1] It is not practicable to locate such spaces in accordance with Subsection C(2) because of:

- [a] Unusual shape, size or dimensions of the lot;
- [b] The lack of an alley or the lack of appropriate ingress or egress facilities through existing or proposed alleys or streets; or
- [c] Traffic hazards.

[2] The Council may impose conditions as to screening, coping, setbacks, fences, the location of entrances and exits or any other requirement it shall deem necessary to assure the continued provision and maintenance of such spaces.

EXISTING:

D. Access, maintenance and operation

(3) Each parking space in a Commercial Zone shall be individually accessible at all times from streets or alleys through means of ingress and egress, and no parking space will be authorized or approved if egress requires the vehicle to back directly, in order to exit, onto any of the following: Delaware Route 1, Delaware Avenue, Maryland Avenue or Virginia Avenue.

PROPOSED:

D. Access, maintenance and operation

(3) Each parking space in a Commercial Zone shall be individually accessible at all times from streets or alleys through means of ingress and egress, and no parking space will be authorized or approved if egress requires the vehicle to back directly, in order to exit, onto any of the following: Delaware Route 1, Delaware Avenue, Maryland Avenue or Island Street.

§ 160-13. Violations and penalties.

EXISTING:

A violation of the provisions of this chapter, or the failure to comply with any of its requirements, shall be punishable by a fine of not less than \$25, nor more than \$2,500, for each offense, plus court costs. Whenever a person shall have been notified in writing, certified mail, return receipt requested, by the Building Official or other Town official or by service of a summons of a violation of this chapter, each day of continued violation shall be considered as a separate offense. The owner or tenant of any building, structure, premises or any part thereof, and any architect, builder, contractor, employee or agent for one of the aforementioned persons, or any other person who commits, furthers, participates in, assists in, or maintains any such violation may be separately convicted and be subject to the same penalties provided herein. Nothing in this section shall be construed to prevent or otherwise prohibit the prosecution of the same violation occurring on a date subsequent to the conviction. The commission, allowance or participation in any activity defined as a violation of this chapter shall be deemed and is hereby declared to be a common and public nuisance. The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

PROPOSED:

A violation of the provisions of this chapter, or the failure to comply with any of its requirements, shall be punishable by a fine \$100 for each offense, plus court costs. Whenever a person shall have been notified in writing, certified mail, return receipt requested, by the Building Official or other Town official or by service of a summons of a violation of this chapter, each day of continued violation shall be considered as a separate offense. The owner or tenant of any building, structure, premises or any part thereof, and any architect, builder, contractor, employee or agent for one of the aforementioned persons, or any other person who commits, furthers, participates in, assists in, or maintains any such violation may be separately convicted and be subject to the same penalties provided herein. Nothing in this section shall be construed to prevent or otherwise prohibit the prosecution of the same violation occurring on a date subsequent to the conviction. The commission, allowance or participation in any activity defined as a violation of this chapter shall be deemed and is hereby declared to be a common and public nuisance. The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

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Approved First Reading – December 14, 2012

Proposed Second Reading – January 25, 2013

PASSED – January 25, 2013

ARTICLE V Beach Concessions

§52-17 Definitions.

As used in this Article, the following terms shall have the meanings indicated:

ANNUAL FEE - The compensation due the Town from the Concessionaire each year for which he/she is awarded privileges under this Article.

BEACH – That portion of the shore of the Atlantic Ocean which extends from the mean low water line inland to the landward toe of the primary dune.

BEACH SERVICE - The selling or renting of services or goods, including, but not limited to, floats, rafts, boogie boards, other recreational equipment, umbrellas, chairs, food and/or beverages.

CONCESSIONAIRE - Any person, corporation, partnership, unincorporated association or other business entity to whom or which the privileges granted under this Article may be awarded. Such rights shall not be assignable except with the written approval of the Town Council.

CONTRACT - The formal document between the Town of Fenwick Island and the Concessionaire that contains the contractual details of the Beach Service.

SEASON – The time period each year designated by the Town Council in the Contract.

§52-18 Concessionaires on Beach.

No Concessionaire shall be allowed to operate, manage, sell or solicit a Beach Service on the Beach within the corporate limits of the Town of Fenwick Island without a written Contract awarded by the Town Council.

§52-19 Cleaning of Beach areas.

The Concessionaire shall be responsible for keeping the Beach area immediately surrounding the Concessionaire's Beach Service free from the accumulation of waste materials, surplus materials and rubbish. The Town shall allow the Concessionaire the use of Town trash cans, an arrangement which shall be set forth with more specificity in the Contract.

§52-20 Supervision of Concessionaire.

The Town Manager shall oversee and supervise the Concessionaire and all operations granted by the Beach Service Contract approved by the Town Council pursuant to this Article.

§52-21 Prequalification Application.

The Town Manager shall prequalify all persons or company desiring to submit a Concessionaire application pursuant to this Article.

§52-22 Public notice to submit applications.

- A. The Town Manager shall advertise in two newspapers that the Town is seeking prequalification applications and bid proposals from persons or companies qualified to be a Concessionaire and to operate a Beach Service in Town.
- B. Bids shall be opened by the Town Manager at the time and place specified in the invitation to bid and/or other bid documents. The successful bid must be accepted and approved by Town Council.

§52-23 Bids; performance bond.

- A. No bid proposal will be considered unless the same is accompanied by a cash deposit in the form of a certified check, which must be drawn on a solvent FDIC-insured banking institution, made payable to the Town of Fenwick Island. The amount of the cash deposit required shall be set forth in the invitation to bid and/or other bid documents provided by the Town. A satisfactory bid bond will also be acceptable in lieu of a cash deposit. All bid bonds shall be issued by a surety company approved by the Town and authorized to transact business in the State of Delaware.
- B. The successful bidder shall deliver to the Town an executed performance bond in an amount at least equal to one hundred percent (100%) of the successful bidder's total bid amount. All performance bonds shall be issued by a surety company approved by the Town and authorized to transact business in the State of Delaware. Said bonds shall be approved by the Town prior to execution of the Contract.

§52-24 Return of bid bonds.

The bid bonds or cash deposits of the unsuccessful bidders will be returned within thirty (30) days after the opening of the bids. Upon execution of the Contract and delivery of a Town-approved performance bond, the bid bond or cash deposit, whichever is applicable, shall be returned to the successful bidder.

§52-25 Decision of Town Council; grounds for refusal.

The Contract shall be awarded to the person, Concessionaire who or which has satisfactorily complied with this Article and the bidding process and who or which appears to the Town Council to be the applicant most likely to render the best service to the Town. The Town Council's decision shall be based on the history, experience, and reputation of the applicant as well as the applicant's ability in terms of sufficient capital and adequate equipment to successfully operate the Beach Service and carry out the expectations and obligations set forth in the Contract. The Town reserves the right to refuse any and all bids.

§52-26 Duties of Concessionaire; transfer of ownership; complaints.

- A. The Concessionaire shall be expected to maintain the Beach Service and all equipment, facilities and structures used in connection therewith in first class condition and in such minimum quantities as the Town Manager shall require. The Concessionaire shall employ courteous and competent personnel and shall operate the Beach Service in an efficient manner.
- B. The failure of the Concessionaire to employ courteous and competent personnel shall be cause for termination of the Contract by the Town.
- C. Any transfer or change of ownership or operation of the Beach Service, without having first submitted written notice to and received written approval from the Town Manager, shall be cause for termination of the Contract by the Town.

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- D. All complaints regarding the Concessionaire's personnel and/or service shall be submitted in writing to the Town Manager within five (5) days of the incident or offense giving rise to the complaint. The Town Manager may impose liquidated damages in an amount set forth in the "Fee Schedule" approved by Resolution of the Town Council if, after a reasonable investigation of the complaint received, the Town Manager determines that a violation of the Concessionaire's Contract or this Article has occurred.

*Approved First Reading – December 14, 2012
Proposed Second Reading – January 25, 2013
Passed – January 25, 2013*

§52-27 Storage.

All goods and equipment used in connection with the Beach Service shall be stored in a manner and/or in structures approved by the Town, all of which must be built in accordance with the specifications set forth in the bid documents, Contract and/or as otherwise approved by the Town Manager.

§52-28 Liability insurance required; indemnification.

Each Concessionaire to whom or which a Contract is awarded pursuant to this Article shall carry general liability, bodily injury and property damage insurance in such amounts as are specified in the Contract. The Concessionaire shall indemnify the Town and hold the Town, as well as its agents and employees, harmless against any claim or loss, whatsoever, arising out of or related to negligence or misconduct on the part of the Concessionaire, his agents, contractors, employees, successors or assigns, all as more fully specified in the bidding documents and Contract.

*Proposed First Reading – December 14, 2012
Proposed Second Reading – January 25, 2013
PASSED – January 25, 2013*

Chapter 61 – Article III (Utility Construction)

Insert the following new subparagraph D. to § 61-18:

D. All outside storage tanks exceeding 25 pounds and not located at or above base flood elevations must be secured in accordance with applicable guidelines, rules, regulations and/or recommendation of the Federal Emergency Management Agency (FEMA) and/or in accordance with individual provider anchoring specifications. Effective date for proper anchoring of all outside storage tanks as indicated above shall be no later than June 1, 2014.

Re-number remaining subparagraphs in § 61-18 so that the subparagraphs previously identified as subparagraphs D. through L. shall now be identified as subparagraphs E. through M.

Posted: January 28, 2013

Chapter 116 – "Peace and Good Order" –

EXISTING:

Article I (Regulations Regarding Camping, Beaches and Vehicles)

PROPOSED:

Article I (Regulations Regarding Camping, Beaches, Parks and Vehicles)

Insert:

§ 116-2. Smoking.

A. Definition:

- 1) *The burning of a cigarette, cigar, pipe or other matter or substance that contains tobacco.*

B. Smoking is prohibited in the following areas:

- 1) *Town parks.*
- 2) *Beach.*

C. Signage Required:

- 1) *No person shall be prosecuted for violation of this section unless signs, readily visible to the public, are posted in appropriate areas at or near the entrance(s) to those areas where smoking is prohibited.*

D. Enforcement:

- 1) *A first violation of this section will result in a written warning. Subsequent violations shall result in the imposition of fines and penalties in accordance with §116-7 of this Chapter.*

Re-number remaining sections.